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The fast-moving pace of technological change is a real challenge for the law, especially when it comes to driver liability in terms of the criminal law, where sanctions and consequences can be severe and life changing. In areas where technology may be removing direct or immediate control from the driver, there is an obvious need to strike a balance between protecting those that use such vehicles and those may be adversely effected by them when things go wrong. No more obvious is this than when it comes to the concept of "driverless" cars. The law has always been fairly clear that the "driver" is the person that is in control, whether that is by steering or by making the car move. Where there is a fault with the vehicle, such as defective brakes, and it is this fault that renders the car unsafe and otherwise causes or contributes at an accident, the "driver" is held to be accountable. The law imposes a strict a liability on the driver in this respect.

If one were to extend the operation of this aspect of law to the concept of driverless cars, it is easy to see how the law might in due course impose a presumptive burden on the person in charge of the car that they are liable for any accident or failure caused by a defect in the computer (which has become the "driver" in the sense of it is making decisions).

In many respects this is already the case. We already have cars that "park" themselves – if the car makes contact with or hits something whilst undertaking an automated act, it is not a defence for the "driver", the person in the driver's seat, who may have relinquished control of the throttle or steering to, to say that he wasn't the one that steered the case. It would still be possible for such a person to be prosecuted for careless driving for instance. There may be occasions when this is considered unfair, as it may be with fully "driverless" cars in due course. There may be arguments about culpability and blame, there may need to be some apportionment of liability, perhaps more likely where there was a "defect" that would have been reasonably beyond or outside the knowledge of the careful and prudent owner or person in charge.

It is certainly fair to say that an already complex area of law will become more so as the law struggles to keep up with and govern changes in technology.

